

<p>TO:</p> <p style="text-align: center;">Commissioner of Trademarks P.O. Box 1451 Alexandria, VA 22313-1451</p>	<p>REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK</p>
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Colorado on the following **X** Trademarks

DOCKET NO. 12-cv-1306	DATE FILED May 18, 2012	U.S. DISTRICT COURT FOR THE DISTRICT OF COLORADO
PLAINTIFF Salba Corp, N.A., et al.,		DEFENDANT Xfactor Holdings, LLC, et al.,
PATENT OR	DATE OF PATENT	HOLDER OF PATENT OR TRADEMARK
1 3,071,655		Please see copy of Complaint attached hereto
2 3,404,098		
3 3,764,274		
4 3,575,940		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
2			
3			
4			
5			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK GREGORY C. LANGHAM	(BY) DEPUTY CLERK	DATE
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Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

SALBA CORP., N.A., a Canadian corporation
SALBA SMART NATURALS PRODUCTS, a Colorado limited liability company,
WILLIAM A. RALSTON, and
RICHARD L. RALSTON,

Plaintiffs,

v.

X FACTOR HOLDINGS, LLC, an inactive Florida limited liability company, and
ANCIENT NATURALS, LLC, a Florida limited liability company,

Defendants.

COMPLAINT WITH JURY DEMAND

Plaintiffs Salba Corp., N.A. ("Salba Corp."), Salba Smart Natural Products ("SSNP"), William A. Ralston and Richard L. Ralston (the "Ralstons") (individually "Plaintiff" and collectively "Plaintiffs") for their Complaint against Defendant X Factor Holdings, LLC ("X Factor") and Ancient Naturals, LLC ("Ancient Naturals") (individually "Defendant" and collectively "Defendants"), allege as follows:

I. THE PARTIES

1. Plaintiff Salba Corp. is a corporation organized and existing under the laws of Canada, having a principal place of business at 42 Oriole Gardens, Toronto ON M4V 1V7, Canada.

2. Plaintiff Salba Smart Natural Products, LLC ("SSNP") is a limited liability company organized and existing under the law of the State of Colorado, having a principal place of business at 5800 Franklin Street, Suite 106, Denver, CO 80216 United States.

3. Plaintiffs the Ralstons are members of Plaintiff SSNP.

4. In 2010, SSNP's and the Ralstons rights in and to certain of the SALBA Marks described below were confirmed by this Court in the Judgment entered in Civil Action No. 09-cv-02142-CMA-MJW.

5. Upon information and belief, Defendant X Factor is an inactive Florida limited liability company having a principal place of business at 5703 Red Bug Lake Road, Suite 190, Winter Springs, FL 32708, United States.

6. Upon information and belief, Defendant Ancient Naturals, LLC ("Ancient Naturals") is a Florida limited liability having a principal place of business at 1540 International Parkway, Suite 2000, Lake Mary, FL 32746, United States. Upon information and belief, Ancient Naturals operates a website hosted at the domain-- salba.com--soliciting sales of SALBA seed and food products from Internet users in this District. Upon information and belief, the salbausa.com domain name also resolves to the website hosted at the salba.com domain. Upon information and belief, Ancient Naturals also operates a website hosted at the domain -- salbastore.com--soliciting sales of SALBA seed and food products from Internet users in this District. Upon information and belief, the salbarx.com domain name links to the website hosted at the salbastore.com domain. Upon information and belief, Defendant X Factor is the registrant of the salba.com, salbausa.com, salbastore.com and salbarx.com domains. Upon

information and belief, Defendant X Factor is the managing member of Defendant Ancient Naturals.

II. JURISDICTION AND VENUE

7. This is an action for trademark infringement, trademark counterfeiting, unfair competition, false designation of origin, false advertising and cyber-squatting arising under the Trademark Act of 1946, 15 U.S.C. § 1051, *et. seq.*, as amended (the “Lanham Act”); violation of the Colorado Consumer Protection Act, C.R.S. § 6-1-101 *et seq.* (“CCPA”); and for common law trademark infringement and unfair competition under the laws of the State of Colorado.

8. The Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) and 15 U.S.C. § 1121. The Court has original or supplemental jurisdiction over the subject matter of this action under the law of the State of Colorado pursuant to 28 U.S.C. §§ 1338(b) and 1367.

9. The Court has personal jurisdiction over Defendants because Defendants have routinely transacted business in this judicial district by offering the sale of counterfeit and infringing products in stores in Colorado. Plaintiffs’ claims arise out of Defendants’ past and ongoing commission of tortious acts in this Judicial District and/or Plaintiffs are being damaged in this Judicial District by Defendants’ past and ongoing tortious activities.

10. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391 because the counterfeit and infringing products are currently being sold in retail locations across Colorado. In particular, Defendants www.salba.com website identifies that Defendants products are sold in the following Colorado stores: Willow Run in Broomfield, Colorado, Coast Herbal in Colorado Springs, Colorado, Vida Health in Dumont, Colorado and Whole In The Wall Herb Shoppe in

Woodland Park, Colorado. Furthermore, Plaintiffs have actually purchased Defendants counterfeit and infringing products at the Willow Run and Whole In The Wall Herb Shoppe, stores as well as six (6) Natural Grocers by Vitamin Cottage stores in Colorado. Upon information and belief, Defendants' counterfeit and infringing products are also currently sold in all thirty (30) Natural Grocers by Vitamin Cottage locations in Colorado.

III. GENERAL ALLEGATIONS

11. The SALBA seed is a combination of two specially developed varieties of the South American chia seed that is sold in seed form and is also used as an ingredient in certain health food products and food supplements. SALBA is a blend of the only two registered varieties of *Salvia hispanica* L – Sahi Alba 911 and 912. (True and correct copies of the Peruvian varietal registration certificates are attached hereto as **Exhibit 1.**) All other chia seeds are a blend of the 80-plus different generic strains of the *Salvia hispanica* L species.

12. SALBA is grown and cultivated exclusively in Peru and Argentina by Plaintiff Salba Corp.'s supplier, the Peruvian company Agrisalba S.A. and its affiliates ("Agrisalba"). Since 2004, Agrisalba and its predecessors have been and remain the exclusive/sole supplier of the SALBA seed throughout the world.

A. Plaintiffs' SALBA Trademarks

13. Prior to Defendants' tortious and infringing acts complained of herein, Salba Corp., its predecessors-in-interest and licensees have used in commerce a variety of marks for SALBA seed and food products that have consisted of or contained the word "SALBA," including, but not limited to, "SALBA" alone, "SALBA OLÉ," "SALBA SMART" and "SALBA LIFE." Indeed, Plaintiff Salba Corp. is in the business of licensing the distribution of

seed and food products that are sold under the SALBA trademark. Plaintiff SSNP has the sole license to distribute and sell the SALBA seed and food products containing the SALBA seed under the “SALBA” trademark throughout the United States. Agrisalba exclusively supplies the SALBA seed to SSNP.

14. Plaintiff Salba Corp. owns the “SALBA” trademark, which has been marketed in the U.S. in connection with nutrient dense unprocessed edible seeds rich in Omega 3 since as early as 2005. In addition to its extensive common law rights, Salba Corp. owns various federal trademark registrations for SALBA, including, but not limited to, U.S. Trademark Registration No. 3,071,655 for unprocessed edible seeds rich in Omega 3. (A true and correct copy of the registration certificate is attached hereto as **Exhibit 2**.)

15. Plaintiffs SSNP and the Ralstons have been using “SALBA SMART” in the U.S. in connection with various snack foods since as early as 2006. SSNP’s and the Ralstons’ food products are in an estimated 1,000 plus grocery stores in all 50 states. In addition to their extensive common law rights, the Ralstons own multiple U.S. trademark registrations for SALBA SMART, such as U.S. Trademark Registration Nos. 3,404,098, 3,575,940, and 3,764,274. (True and correct copies of the registration certificates for these marks are attached hereto as **Exhibit 3**.) (All of the above-referenced trademarks are herein referred to individually and collectively as the “SALBA Marks.”)

16. Salba Corp. also owns and has used the mark NATURE’S PERFECT WHOLE FOOD in commerce in the U.S. in connection with food products since as early as 2007.

17. In addition to its extensive use in the United States, Plaintiffs have also extensively used the SALBA Marks throughout the world. In fact, Plaintiffs own numerous

trademark registrations for or incorporating the “SALBA” mark in many foreign countries, including but not limited to: Australian Registration Nos. 1,118,508 for “SALBA,” and 1,271,014 and 1,111,865 for “SALBA SMART”; Canadian Registration No. 737,717 for “SALBA”; European OHIM Registration No. 003850831 for “SALBA” and European Community Registration No. 980,207 for “SALBA SMART”; New Zealand Registration Nos. 749,560 and 784,617 for “SALBA,” and 797,755 and 747,406 for “SALBA SMART”; and Mexican Registration Nos. 1,081,534, 1,081,535, and 976,134 for “SALBA SMART.”

18. As a result of long-standing, continuous and uninterrupted use in commerce, and extensive advertising and promotion, the SALBA Marks have become widely and favorably known among consumers to identify a single source or origin of specially cultivated seed and, further, to distinguish this specially cultivated seed from the generic chia seed products offered by Plaintiffs’ competitors.

19. Plaintiffs have expended, and continue to expend, substantial amounts of resources, money, time and effort promoting, marketing, advertising and building consumer recognition and goodwill in its extremely valuable and unique seed under and in connection with their well-known and valuable SALBA Marks.

20. Since at least as early as 2006, SSNP has continuously owned and operated a website located at www.salbasmart.com, targeted to U.S. consumers, using the SALBA Marks on and in connection with their products. SSNP’s publicly accessible website at www.salbasmart.com promotes SSNP’s food products, provides information on the history and development of the SALBA seed, and provides recipes and information about the nutritional

advantages of Salba and research related thereto. (True and correct copies of portions of SSNP's www.salbasmart.com website are attached hereto as **Exhibit 4**.)

B. Defendants' Trademark Infringement and Other Tortious Conduct

21. Defendants are not licensed to use any of the SALBA Marks and yet Defendants continue to offer and sell seed and food products using the SALBA Marks through the following websites: www.salba.com, www.salbarx.com and www.salbastore.com. Defendants' unauthorized use of the SALBA Marks is infringing and clearly designed to divert customers from and free ride off Plaintiffs. Indeed, Defendants' www.salba.com website falsely identifies it as the "Salba® Official Website." (a true and correct copy of a portion of Defendants' www.salba.com website is attached hereto as **Exhibit 5**.)

22. At www.salba.com, Defendants acknowledge Plaintiffs' superior and exclusive rights to the SALBA Marks by using SALBA® despite knowing that Defendants do not own any such registrations.

23. Defendants are not obtaining or using authentic SALBA seed from Agrisalba, which has always been and remains the exclusive and sole supplier of the SALBA seed throughout the world.

24. Nonetheless, Defendants advertise, sell, and offer for sale throughout the United States and in this Judicial District counterfeit seed and food products under the names SALBA, SALBA RX, and SALBA LIFE in direct competition with SSNP's products, through the same markets and channels of trade, to the same relevant consumers. (True and correct copies of portions of Defendants' www.salba.com, www.salbarx.com and www.salbastore.com websites are attached hereto as **Exhibit 6**.)

25. Defendants are knowingly using counterfeit seed and placing SALBA marks on products throughout the U.S. and in this Judicial District that cannot contain the proprietary strain of SALBA seed, which can only be obtained from one supplier (Agrisalba) and is only sold to one licensee – SSNP.

26. Defendants have even copied Plaintiff Salba Corp's tell-tale leaf symbol that is commonly displayed with the SALBA Marks as well as Plaintiff Salba Corp.'s NATURE'S PERFECT WHOLE FOOD trademark in Defendants' products in order to falsely suggest that their counterfeit products are authentic. (*See, e.g., Exhibit 6.*)

27. Defendants' actions are likely to cause confusion or mistake, or to deceive the relevant consumers as to the origin, source and/or quality of Defendants' products and services.

28. Consumers are likely to be confused, actually confused, misdirected, and deceived into believing that Defendants' websites and/or products are the same as, affiliated with, associated with, sponsored or licensed by, and/or otherwise connected to or with Plaintiffs.

29. On information and belief, Defendants' actions have been motivated exclusively by financial gain, have willfully been taken with full knowledge of Plaintiffs' superior legal rights and are without regard to the public policy right of consumers to be free of confusion as to the source and origin of products and services. As Defendants are not obtaining any seed from the sole supplier of SALBA seed (*i.e., Agrisalba*) in the world, are not paying any license fees to Plaintiffs, do not own any federal trademark registrations for SALBA and yet are still referencing a federally registered mark, Defendants' continued infringing and counterfeit use of Plaintiffs' SALBA Marks evidences a wrongful intent to trade upon Plaintiffs' goodwill and reputation.

IV. FIRST CLAIM FOR RELIEF
Trademark Counterfeiting and Infringement Under
15 U.S.C. §§ 1114(1)(a), 1116, and 1117
(Against All Defendants)

30. Plaintiffs reallege and incorporate each and every allegation set forth in paragraphs 1 through 29 above as if fully set forth and restated herein.

31. Plaintiffs are the owners of all right, title, and interest in and to their SALBA Marks, and all goodwill appurtenant thereto.

32. The acts of Defendants alleged herein constitute the use in commerce, without the consent of Plaintiffs, of a reproduction, counterfeit, copy, or colorable imitation of one or more of the SALBA Marks in connection with the sale, offering for sale, distribution, or advertising of goods, which use is likely to cause confusion or mistake, or to deceive consumers and therefore infringe Plaintiffs rights in one or more of the SALBA Marks, all in violation of the Lanham Act.

33. Defendants intentionally adopted and continue to use Plaintiffs' SALBA Marks with full knowledge of Plaintiffs' superior rights, and with full knowledge that their unauthorized and infringing use of Plaintiffs' SALBA Marks is intended to cause confusion, mistake or deception. As such, Defendants' use of the counterfeit version of the SALBA Marks is willful, intentional and done with the knowledge that the marks were counterfeit marks, as defined in Section 34(d)(1)(B) of the Lanham Act, 15 U.S.C. § 1116(d)(1)(B).

34. Defendants are promoting and otherwise advertising, selling, and offering for sale counterfeit and infringing goods bearing the SALBA Marks.

35. Defendants' counterfeiting and infringing activities are likely to cause and is willfully intended to cause confusion, mistake, and deception among the relevant consumers as

to the origin and quality of such products and constitutes trademark counterfeiting under 15 U.S.C. § 1114(1)(b).

36. As a result of Defendants' unlawful actions, Plaintiffs have suffered commercial harm.

37. Plaintiffs have also been, and continue to be, irreparably harmed by Defendants' unlawful actions and have no adequate remedy at law.

V. SECOND CLAIM FOR RELIEF
Federal Unfair Competition and False Advertising Under
15 U.S.C. §§ 1125(a)(1)(A) and (B)
(Against all Defendants)

38. Plaintiffs reallege and incorporate each and every allegation set forth in paragraphs 1 through 37 above as if fully set forth and restated herein.

39. Defendants' unlicensed, un-consented to, and otherwise unauthorized use of Plaintiffs' SALBA Marks and confusingly similar variations thereof, on or in connection with Defendants' business and products in commerce is likely to cause confusion, or to cause mistake, or to deceive, consumers and the relevant public into falsely believing that Defendants' non-Salba containing products are affiliated, connected, or associated with Plaintiffs and/or Plaintiffs' SALBA Marks.

40. Defendants' unlicensed, un-consented to, and otherwise unauthorized use of Plaintiffs' SALBA Marks and confusingly similar variations thereof, on or in connection with Defendants' business and products in commerce is likely to cause confusion, or to cause mistake, or to deceive, consumers and the relevant public into believing that Plaintiffs are: (i) the source or origin of Defendants' business, goods and/or services; (ii) sponsoring Defendants' business,

goods, and/or services; (iii) approving Defendants' business, goods and/or services; and/or (iv) otherwise affiliated with Defendants' business, goods and/or services.

41. Defendants have made false and misleading misrepresentations in interstate commerce in commercial advertising or promotion regarding the nature, characteristics and/or qualities of their products. Defendants are not obtaining or using authentic SALBA seed from Agrisalba, which has always been and remains the exclusive and sole supplier of the SALBA seed throughout the world

42. Defendants falsely advertise on their websites, www.salba.com, www.salbarx.com, and www.salbastore.com, that their products contain Plaintiffs' SALBA seed when this is not the case.

43. More particularly, several statements in Defendants' advertising falsely claim that their counterfeit products contain SALBA, for example: "Salba Ground Seed product is a convenient, pre-milled version of Salba Whole Seed" and "Salba is the only evidence-based variety of *Salvia hispanica* L, the recently re-discovered grain that was once the nutritional cornerstone of Aztec society." These claims are false and misleading, and misrepresent the characteristics or qualities of Defendants' counterfeit products.

44. Upon information and belief, the false and misleading statements in the advertising deceives and has a tendency to continue to deceive, a substantial segment of its audience.

45. Upon information and belief, the deception of the advertising is material, and has influenced, and will continue to influence, the purchasing decisions of potential customers.

46. The deceptive advertisements injured, and are likely to continue to injure Plaintiffs.

47. Defendants' counterfeit goods are seemingly identical in appearance to each of Plaintiffs' genuine goods. Defendants' counterfeit goods, however, are not authentic SALBA obtained from Agrisalba, but are different from and do not include Plaintiffs' high quality seed as falsely touted on Defendants' website.

48. Defendants have thus committed and are continuing to commit acts of unfair competition and false advertising in interstate commerce in violation of, *inter alia*, Section 43(a) of the Lanham Act, 15 U.S.C. §§ 1125(a)(1)(A) and (B).

49. Defendants' acts of unfair competition and false advertising have caused and will continue to cause damage and irreparable harm to Plaintiffs, and are likely to continue unabated, thereby causing further damage and irreparable harm to Plaintiffs and to the valuable goodwill symbolized by and associated with its distinctive and well-known SALBA Marks, unless enjoined and restrained by the Court.

50. Plaintiffs have no adequate remedy at law. If Defendants' activities are not enjoined, Plaintiffs will continue to suffer irreparable harm and injury to their SALBA Marks, their goodwill, and their reputation.

51. Defendants' unfair competition and false advertising is and was knowing and willful.

52. As a result of Defendants' activities, Plaintiffs have been damaged in an amount to be ascertained at trial.

VI. THIRD CLAIM FOR RELIEF
Deceptive Trade Practices Under the
Colorado Consumer Protection Act, C.R.S. § 6-1-101 *et seq.*
(Against all Defendants)

53. Plaintiffs reallege and incorporate each and every allegation set forth in paragraphs 1 through 52 above as if fully set forth and restated herein.

54. In the course of their business, Defendants have and continue to knowingly pass off their goods, services, or property as those of Plaintiffs and/or the SALBA Marks.

55. In the course of their business, Defendants have and continue to knowingly make false representations as to affiliation, connection, or association with or certification by Plaintiffs and/or the SALBA Marks.

56. In the course of their business, Defendants have and continue to knowingly make false representations as to the sponsorship, approval, status, affiliation, or connection of Plaintiffs and/or the SALBA Marks with Defendants' business, goods, services, or property.

57. Defendants are knowingly making a false representation as to the characteristics, ingredients, uses, and benefits of its goods because Defendants' own website details the nutritional advantages of SALBA, the exclusively cultivated and only registered varieties (known as Sahi Alba 911 and 912) of *Salvia hispanica* L. over the generic and common strains of chia. As such, Defendants know that Plaintiffs' SALBA is different from common chia, that they do not purchase their seeds from Agrisalba, the exclusive SALBA supplier, that they are not selling SALBA, and that they are falsely representing that their goods have characteristics, ingredients, uses and benefits that they do not have.

58. SALBA has greater nutritional advantages and benefits over generic chia. Upon information and belief, Defendants are selling generic chia, which does not have these particular

nutritional advantages and yet Defendants nonetheless represent that their goods are of the higher SALBA quality and standard when they know their products are not SALBA.

59. Without Plaintiffs' authorization, Defendants have identified and continue to knowingly identify Defendants and Defendants' business and/or goods as SALBA and/or confusingly similar variations thereof, including but not limited to SALBA RX and SALBA LIFE.

60. Defendants' false representations on their websites were and are directed to the market generally, taking the form of widespread, nationwide advertisement, which does not exclude Colorado residents. Defendants' goods are closely related and directly compete with Plaintiffs' goods offered under the SALBA Marks, and are offered and provided through the same markets and channels of trade to the same relevant consumers, including customers in this Judicial District. Defendants' actions have and do create a significant public impact on actual or potential consumers of Plaintiffs' goods.

61. Based on the foregoing, Defendants have engaged in deceptive trade practices as defined by the Colorado Consumer Protection Act, C.R.S. §§ 6-1-105(1)(a),(b),(c) (e) or (g) and Colorado common law.

62. As a result of Defendants' unlawful actions, Plaintiffs have suffered commercial harm. Defendants have damaged and will continue to damage Plaintiffs and their valuable SALBA Marks causing irreparable harm for which Plaintiffs have no adequate remedy at law.

63. Defendant's actions are and were knowing and willful.

64. As a result of Defendant's activities, Plaintiffs have been damaged in an amount to be ascertained at trial.

VII. FOURTH CLAIM FOR RELIEF
Cyber-Squatting Under 15 U.S.C. § 1125(d)
(Against Defendant X Factor Only)

65. Plaintiffs reallege and incorporates each and every allegation set forth in paragraphs 1 through 64 above as if fully set forth and restated herein.

66. Plaintiffs are the owners of all right, title, and interest in and to their SALBA Marks, and all goodwill appurtenant thereto.

67. Upon information and belief, Defendant X Factor has a bad faith intent to profit from its unlicensed, un-consented to, and otherwise unauthorized use in commerce of Plaintiffs' SALBA Marks.

68. Upon information and belief, Defendant X Factor, uses domain names (salba.com, salbausa.com, salbastore.com, and salbarx.com) that at the time of registration were identical or confusingly similar to Plaintiffs' registered and distinctive SALBA Marks.

69. Upon information and belief, Defendant X Factor intends to divert consumers from Plaintiff SSNP's website to Defendant's salba.com salbastore.com and salbarx.com websites, which could harm the goodwill represented by Plaintiffs' SALBA Marks. Defendant's actions have been for commercial gain and create a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of its salba.com, salbastore.com and salbarx.com sites. Defendant does not have any bona fide noncommercial or fair use of the SALBA Marks in its salba.com, salbausa.com, salbastore.com and salbarx.com domain names.

70. Defendant X Factor has thus committed and is continuing to commit acts of cyber-squatting in violation of, *inter alia*, Section 43(d) of the Lanham Act, 15 U.S.C. § 1125(d).

71. Defendant X Factor's acts of cyber-squatting have caused and will continue to cause damage and irreparable harm to Plaintiffs, and are likely to continue unabated, thereby causing further damage and irreparable harm to Plaintiffs and to the valuable goodwill symbolized by and associated with its distinctive and well-known SALBA Marks, unless enjoined and restrained by the Court.

72. Plaintiffs have no adequate remedy at law. If Defendant X Factor's activities are not enjoined, Plaintiffs will continue to suffer irreparable harm and injury to their SALBA Marks, their goodwill, and their reputation.

73. Defendant X Factor's cyber-squatting is and was knowing and willful.

74. As a result of Defendant X Factor's activities, Plaintiffs have been damaged in an amount to be ascertained at trial.

VIII. FIFTH CLAIM FOR RELIEF
Common Law Trademark Infringement and Unfair Competition
(Against All Defendants)

75. Plaintiffs reallege and incorporates each and every allegation set forth in paragraphs 1 through 74 above as if fully set forth and restated herein.

76. The SALBA Marks are distinctive and valid at common law.

77. Plaintiffs have used their SALBA Marks in U.S. commerce, including in the State of Colorado, since at least as early as 2006.

78. Defendants' actions as described herein have caused and are likely to cause confusion with Plaintiffs' established and superior rights and otherwise unfairly compete with Plaintiffs. The consuming public is likely to be deceived by Defendants' use of the SALBA

Marks as to the source or origin of Defendants' goods. Defendants' conduct constitutes trademark infringement and unfair competition under Colorado common law.

79. Defendants' acts of trademark infringement and unfair competition have caused and will continue to cause damage and irreparable harm to Plaintiffs, and are likely to continue unabated, thereby causing further damage and irreparable harm to Plaintiffs and to the valuable goodwill symbolized by and associated with its distinctive and well-known SALBA Marks, unless enjoined and restrained by the Court.

80. Plaintiffs have no adequate remedy at law. If Defendants' activities are not enjoined, Plaintiffs will continue to suffer irreparable harm and injury to their SALBA Marks, their goodwill, and their reputation.

81. Defendants' trademark infringement and unfair competition is and was knowing and willful.

82. As a result of Defendants' activities, Plaintiffs have been damaged in an amount to be ascertained at trial.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Salba Corp., N.A., Salba Smart Natural Products, William A. Ralston and Richard L. Ralston respectfully request that the Court enter judgment against Defendants X Factor Holdings, LLC and Ancient Naturals, LLC as follows:

a. That the Court enter a preliminary injunction during the pendency of this action, and a permanent injunction thereafter restraining Defendants and their respective employees, partners, officers, directors, agents, representatives, attorneys, successors, and assigns, and all persons in active concert or participation with any of them, from:

- (1) any further use of SALBA or any other mark which is confusingly similar thereto;
- (2) directly or indirectly using the SALBA Marks or any confusingly similar mark in combination with other terms, marks, symbols, or trade dress;
- (3) using any unauthorized copy or colorable imitation of the SALBA Marks in such fashion as is likely to relate or connect Defendants with Plaintiffs;
- (4) using any false designation of origin or false advertising which can or is likely to lead the trade or public, or individual members thereof, to believe mistakenly that any good advertised, promoted, offered, or sold by Defendants is sponsored, endorsed, connected with, approved, or authorized by Plaintiffs;
- (5) causing likelihood of confusion or injury to Plaintiffs' business reputation and the distinctiveness of the SALBA mark by unauthorized use of a confusingly similar word or design;
- (6) performing any action or using any trademark, symbol, imagery or slogan which is likely to cause confusion or mistake or to deceive or otherwise mislead the trade and/or public into believing that SALBA and the common species of chia, *Salvia hispanica* L., are one and the same, or that Plaintiffs are the sponsor of Defendants or their products, or that Plaintiffs are in some matter affiliated with Defendants or that Defendants' products originate with Plaintiffs' SALBA or are connected or offered with the approval, consent, authorization or under the supervision of Plaintiff;
- (7) importing into the United States any goods bearing or incorporating the SALBA Marks or any confusingly similar mark;

(8) manufacturing, producing, distributing, circulating, marketing, selling, or otherwise disposing of any printed or electronic material which bears a copy or colorable imitation of Plaintiffs' SALBA Marks;

(9) engaging in any other conduct constituting unfair competition with Plaintiffs, or violation of the Colorado Consumer Protection Act;

(10) filing applications with the U.S. Patent and Trademark Office or other governmental entities to register such marks and/or registering domain names incorporating such marks and/or from otherwise infringing the distinctive nature of Plaintiffs' SALBA Marks, and

(11) assisting, aiding or abetting another person or business entity in engaging or performing any of the activities enumerated in subparagraphs (1) through (10) above;

b. That the Court order Defendants, through a bonded 3rd party, to destroy and/or obliterate from any and all bid proposals, labels, packaging, signs, brochures, advertisements, stationery, leaflets, and other items in their possession, or under their control, upon which appear or reflect the SALBA Marks, and/or any confusingly similar variations thereof (including but not limited to "SALBA RX" and "SALBA LIFE") in any manner or form, or any other reproduction, counterfeit, copy, or colorable imitation of Plaintiffs' SALBA Marks, either alone or in combination with any designation, and all plates, molds, matrices and other means of making the same;

c. That the Court order Defendants to recall from all vendors any and all items upon which appear or reflect the SALBA Marks, and/or any confusingly similar variations

thereof (including but not limited to "SALBA RX" and "SALBA LIFE") in any manner or form, or any other reproduction, counterfeit, copy, or colorable imitation of Plaintiffs' SALBA Marks.

d. That the Defendants be ordered to file with the Court and serve upon Plaintiffs within thirty (30) days of the entry of injunction, a report in writing and under oath setting forth in detail the manner and form in which Defendants have complied with any ordered injunction;

e. That the Court order Defendant X Factor to transfer and assign to Plaintiffs the registration for the domain names salba.com, salbausa.com, salbastore.com, salbarx.com, and any other registrations for any domain names confusingly similar to Plaintiffs' SALBA Marks;

f. That the Court order Defendants to cease further infringing the SALBA Marks and damaging Plaintiffs' goodwill;

g. That the Court enter a judgment finding that Defendants have infringed and willfully infringed Plaintiffs' SALBA Marks;

h. That the Court enter a judgment finding that Defendants have committed unfair competition, and false advertising by willfully using Plaintiffs' SALBA Marks;

i. That the Court enter a judgment finding that Defendants have committed cyber-squatting by willfully using Plaintiffs' SALBA Marks;

j. That the Court enter a judgment finding that Defendants engaged in deceptive trade practices;

k. That the Court order Defendants to account for and pay to Plaintiffs all profits realized by Defendants from their infringement of or upon Plaintiffs' SALBA Marks,

their false advertising, their acts of unfair competition, their acts of cyber-squatting, and their acts of deceptive trade practices;

l. That the Court order Defendants to pay to Plaintiffs such damages as Plaintiffs have actually sustained;

(1) in consequence of Defendants' infringement of and upon Plaintiffs' SALBA Marks;

(2) in consequence of Defendants' actions of unfair competition;

(3) in consequence of Defendants' false advertising;

(4) in consequence of Defendants' cyber-squatting; and

(5) in consequence of Defendants' deceptive trade practices;

m. That the Court find that the circumstances and actions of Defendants' conduct was willful and sufficient to merit an award of exemplary damages to Plaintiffs in the amount of three times the amount found as actual damages;

n. That the Court order Defendants to pay Plaintiffs their costs and expenses incurred in and related to this action;

o. That the Court order that this is an "exceptional case" and order Defendants to pay Plaintiffs' reasonable attorneys' fees; and

p. That the Court find that circumstances and actions of Defendants' conduct in intentionally and knowingly using a counterfeit mark sufficient to enter a judgment for three times such profits and damages, whichever is greater, and prejudgment interest under 15 U.S.C. § 1117(b);

q. That the Court order Defendants to pay to Plaintiffs statutory damages under 15 U.S.C. §1117(c) of not less than \$1,000 and enhanced up to \$2,000,000 per counterfeit mark per type of good due to Defendants willful acts;

r. That the Court order Defendants to pay Plaintiffs statutory damages under 15 U.S.C. §1117(d) of not less than \$1,000 and up to \$100,000 per domain name as the Court considers just; and

s. That the Court award such other and further relief as the Court deems just and proper under the circumstances.

X. DEMAND FOR JURY

Plaintiffs Salba Corp., N.A., Salba Smart Natural Products, William A. Ralston and Richard L. Ralston request a jury on all issues so triable.

Dated: May 18, 2012

Respectfully submitted,

/s/ Stephen D. Gurr
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